IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 208 of 2007.

Date of Decision: 20th September, 2007

Ram Lubhaya Sanehi. **Petitioner.**

Versus

Ajit Singh. **Respondent.**

Coram

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting?[1]

For the petitioner: Mr. Onkar Jairath, Advocate.

For the respondents: Nemo.

V.K. Gupta, C.J. (Oral).

Pursuant to the order dated 28th March, 2006 passed by this Court in CMPMO No.78 of 2006, the learned District Judge, Una has disposed of Civil Misc. Application No.36 of 2006 in Civil Appeal No.18 of 2005 vide order dated 18th June, 2007 which is under challenge in this petition filed under Article 227 of the Constitution of India. Vide this impugned order, the application filed by the petitioner under Order 41 Rule 27 of the Code of Civil Procedure has been rejected. Also the learned District Judge has rejected the

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

contention of the petitioner in the aforesaid pending appeal that the learned trial Court in the suit had wrongly dismissed his application under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the plaint.

After hearing Mr. Onkar Jairath, learned counsel appearing for the petitioner, I feel satisfied that on both the counts the learned District Judge has by proper appreciation of the facts and circumstances of this case come to a right conclusion with respect to both the prayers of the petitioner. He has rightly rejected the petitioner's application for leading additional evidence in the appeal filed under Order 41 Rule 27 of the Code of Civil Procedure and has also rightly rejected the petitioner's contention that the amendment application had wrongly been dismissed by the trial Court.

The story putforth by the petitioner about the defendant and one Manohar Lal having entered into an agreement on 28th March, 1995 and the petitioner having paid Rs.72,000/- to Manohar Lal for securing a subsequent agreement in his favour by the defendant was sought to be brought on record by the aforesaid two modes, viz. application under Order 41 Rule 27 and the amendment of the plaint. In the face of the clear deposition by the petitioner-plaintiff during his examination-in-chief as well as cross-examination in the suit where he had appeared as PW-1 that he had paid the amount in cash in the bank premises to the defendant, such a

story could not have been permitted to be brought on record. Secondly as the circumstances reveal, the plaintiff took almost eight years in filing the amendment application in the suit. I have perused the amendment application and find that it is devoid of the material facts as well as material particulars.

On a totality of circumstances, I find that no interference is called for as far as the impugned order is concerned. The petition is dismissed in limine.

CMP No.766 of 2007.

In view of the dismissal of the main petition, this application shall also stand dismissed.

20th September, 2007. (V.K. Gupta), C.J.
(tr)